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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/762,121      | 01/20/2004  | Takami Ito           | 480213.401          | 3954             |

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| EXAMINER |
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VALENTI, ANDREA M

| ART UNIT | PAPER NUMBER |
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3643

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/762,121

Applicant(s)

ITO, TAKAMI

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2,4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,199,213 to Kerbs et al.

Regarding Claim 1, Kerbs teaches a flower ornamental assembly comprising a support post (Kerbs #12) having a lower part buried in the ground or fixed to the ground with a fixing device (Kerbs #20, 16, 17, 13, 14, 19) so as to be erected upward; a flower ornament pot (Kerbs Fig. 6 #22 and 26) having at the upper end an opening and having at the lower end a through-hole through which the support post is inserted; and a tilt preventive member (Kerbs #28) placed in the flower ornament pot around the support post for cooperating with the support post to erect and support the flower ornament pot; and a flowerpot (Kerbs Fig. 6 element P) resting on the opening of and being in contact with the flower ornament pot (Kerbs Fig. 6 #22 and 26), the support post (Kerbs Fig. 6 #12) terminating prior to the bottom of the flowerpot such that the support post does not penetrate or come in contact with the flower pot

Regarding Claim 2, Kerbs teaches the tilt preventive member is a filler filling a surrounding of the support post inside the flower ornament pot (Kerbs Fig. 6 #28)

Regarding Claim 4, Kerbs teaches a height adjustment piece interposed between the flower ornament pot and the ground for adjusting a height position of the flower ornament pot (Kerbs #18 and 16).

Regarding Claim 5, Kerbs teaches a pedestal (Kerbs #19) integrally fitted (Kerbs is integrally fitted via #12, applicant has not claimed directly contacting) to the lower end of the flower ornament pot, wherein the pedestal has a hollow space communicating with the through-hole of the flower ornament pot for inserting the support post (Kerbs Fig. 4).

Claims 6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,746,208 to Lewis.

Regarding Claim 6, Lewis teaches a flower ornamental assembly comprising a flowerpot (Lewis Col. 2 line 54-55); a support post (Lewis #16) having a lower part buried in the ground or fixed to the ground with a fixing device so as to be erected upwards (Lewis Fig. 1); and a flower ornament pot (Lewis #10 and 40) having at the upper end an opening for accommodating the flowerpot and having a lower end a through-hole through which the support post is inserted, wherein the flower ornament pot has a hollow tubular part (Lewis Fig. 1 #12) integrally erected upwards from the through-hole, and the flower ornament pot is erected and supported with the support post inserted in the tubular part, the support post terminating prior to the bottom of the flowerpot such that the support post does not penetrate or come in contact with the

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flowerpot (Lewis #12 prevents element #16 from penetrating or coming in to contact with the flower pot).

Regarding Claim 9, Lewis teaches a rib reinforcement member formed on the hollow tubular part (Lewis Fig. 1 #24 and 20).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,199,213 to Kerbs et al in view of U.S. Patent No. 4,635,395 to Brown.

Regarding Claim 3, Kerbs is silent on the tilt preventive member includes: a block body having a through-hole to allow the support post to insert in the vertical direction inside the flower ornament pot, and restraining the inclination of the flower ornament pot within a specific range, a buffer member filling a space between the block body, the flower ornament pot, and the support post. However, Brown teaches a tilt preventive member including a block body with a through-hole (Brown #14, 20, and 24). It would have been obvious to one of ordinary skill in the art to modify the teachings of Kerbs with the teachings of Brown at the time of the invention for the rotation advantage taught by Kerbs (Kerbs Col. 3 line 42). Kerbs as modified teaches a buffer member (Kerbs #28)

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Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,199,213 to Kerbs in view of U.S. Patent No. 2,746,208 to Lewis.

Regarding Claim 6, Kerbs teaches a flower ornamental assembly comprising a flowerpot (Kerbs element P); a support post (Kerbs #12) having a lower part buried in the ground or fixed to the ground with a fixing device so as to be erected upwards (Kerbs Fig. 4 #14, 13, 16, 17, 10, and 20); and a flower ornament pot (Kerbs #22 and 26) having at the upper end an opening for accommodating the flowerpot and having a lower end a through-hole through which the support post is inserted, and the flower ornament pot is erected and supported with the support post inserted, the support post terminating prior to the bottom of the flowerpot such that the support post does not penetrate or come in contact with the flowerpot (Kerbs Fig. 6)

Kerbs is silent on wherein the flower ornament pot has a hollow tubular part integrally erected upwards from the through-hole. However, Lewis teaches a hollow tubular part integrally erected upwards from the through-hole (Lewis #12). It would have been obvious to one of ordinary skill in the art to modify the teachings of Kerbs with the teachings of Lewis at the time of the invention to protect the support post from exposure to a lot of moisture and to provide more stability to the system.

Regarding Claim 7, Kerbs as modified teaches a filler filling (Kerbs #28) a surrounding of the hollow tubular part within the flower ornament pot.

Regarding Claim 9, Kerbs as modified is silent on a rib reinforcement member formed on the hollow tubular part. However, Lewis teaches a rib reinforcement member on a hollow tubular part (Lewis Fig. 1 #24 and 20). It would have been obvious to one

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of ordinary skill in the art to further modify the teachings of Kerbs with the teachings of Lewis at the time of the invention for the advantage of firmly positioning the hollow member in the filler (Kerbs #28).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-7 and 9 have been considered but are moot in view of the new ground(s) of rejection.

Examiner strongly encourages applicant to incorporate structural features of element #7, 9 and T into independent claim 1 and the examiner suggest the addition of more structural limitations to independent claim 6.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,622,004; U.S. Patent No. 6,901,700; U.S. Patent Pub. No. US 2003/0188480.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

19 September 2005